

## § 11.81

also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

(c) *Steps in the Damage Determination phase.* The authorized official shall develop a Restoration and Compensation Determination Plan, described in § 11.81 of this part. To prepare this Restoration and Compensation Determination Plan, the authorized official shall develop a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and select, pursuant to the guidance of § 11.82 of this part, the most appropriate of those alternatives; and identify the cost estimating and valuation methodologies, described in § 11.83 of this part, that will be used to calculate damages. The guidance provided in § 11.84 of this part shall be followed in implementing the cost estimating and valuation methodologies. After public review of the Restoration and Compensation Determination Plan, the authorized official shall implement the Restoration and Compensation Determination Plan.

(d) *Completion of the Damage Determination phase.* Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in § 11.90 of this part.

[59 FR 14283, Mar. 25, 1994, as amended at 73 FR 75266, Oct. 2, 2008]

### **§ 11.81 Damage determination phase—restoration and compensation determination plan.**

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services, and, where rel-

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evant, the compensable value; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and, where relevant, the compensable value.

(b) The authorized official shall use the guidance in §§ 11.82, 11.83, and 11.84 of this part to develop the Restoration and Compensation Determination Plan.

(c) The authorized official shall list the methodologies he expects to use to determine the costs of all actions considered within the selected alternative and, where relevant, the compensable value of the lost services through the recovery period associated with the selected alternative. The methodologies to use in determining costs and compensable value are described in § 11.83 of this part.

(d)(1) The Restoration and Compensation Determination Plan shall be part of the Assessment Plan developed in subpart B of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan at the time that the overall Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases.

(2) If the Restoration and Compensation Determination Plan is prepared later than the Assessment Plan, it shall be made available separately for public review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of

the public for a period of no less than 30 calendar days. Reasonable extensions may be granted as appropriate.

(3) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

(4) Appropriate public review of the plan must be completed before the authorized official performs the methodologies listed in the Restoration and Compensation Determination Plan.

(e) The Restoration and Compensation Determination Plan may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal, State, or tribal laws applicable to restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources or may be combined with other plans for related purposes, so long as the requirements of this section are fulfilled.

[59 FR 14283, Mar. 25, 1994, as amended at 73 FR 57266, Oct. 2, 2008]

**§ 11.82 Damage determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.**

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based

on the guidance provided in this section.

(b) *Steps.* (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.

(i) Restoration or rehabilitation actions are those actions undertaken to return injured resources to their baseline condition, as measured in terms of the physical, chemical, or biological properties that the injured resources would have exhibited or the services that would have been provided by those resources had the discharge of oil or release of the hazardous substance under investigation not occurred. Such actions would be in addition to response actions completed or anticipated pursuant to the National Contingency Plan (NCP).

(ii) Replacement or acquisition of the equivalent means the substitution for injured resources with resources that provide the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(iii) Possible alternatives are limited to those actions that (i) restore or rehabilitate the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) replace and/or acquire equivalent natural resources capable of providing such services.

(2) *Services provided by the resources.*

(i) In developing each of the possible alternatives, the authorized official shall list the proposed actions that would restore, rehabilitate, replace, and/or acquire the equivalent of the services provided by the injured natural resources that have been lost, and the period of time over which these services would continue to be lost.

(ii) The authorized official shall identify services previously provided by the resources in their baseline condition in